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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
1997 Annual Access Tariff Filings	)	CC Docket No. 97-149
	)	CCB/CPD 98-1

COMMENTS OF THE SBC COMPANIES

Pursuant to Section 1.106 of the rules of the Federal Communications Commission (Commission), and the Public Notice released January 6, 1998,[1] Southwestern Bell Telephone Company (SWBT), Pacific Bell, and Nevada Bell (collectively, the SBC Companies) hereby respectfully request that the Commission grant the Petition for Reconsideration (PFR) filed by the Bell Atlantic Telephone Companies [2] if it does not allow Transmittal No. 2683 filed by SWBT to take effect.

BACKGROUND

In its petition Bell Atlantic states that the 1997 Annual Filing Order [3] erroneously required it to refund certain common line charges paid by long distance carriers under its 1997

[1] Public Notice, Bell Atlantic and the SBC Companies Petition the Commission for Reconsideration in the 1997 Annual Access Tariff Filings, CC Docket No. 97-149, Released: January 6, 1998.

[2] Petition for Reconsideration of Bell Atlantic, In the Matter of 1997 Annual Acess Tariff Filings, CC Docket No. 97-149, filed December 31, 1997 - (Bell Atlantic PFR).

[3] 1997 Annual Access Tariff Filings, CC Docket No. 97-149, Memorandum Opinion and Order (FCC 97-403) (December 1, 1997) (1997 Annual Filing Order).

access tariff and that it has not been provided an opportunity to recover its common line costs from other customers that the Commission concluded should have paid them.[4] Bell Atlantic asserts the Commission for the first time adopted a requirement that, Bell Atlantic and other local exchange carriers (LECs) must allocate their common line costs between the common line rates paid by long distance carriers and those paid by end users in a specific manner. Bell Atlantic contends that the Commission held that the 1997 tariffs filed by LECs, including the former NYNEX companies, incorrectly allocated too much of their common line costs to the rates paid by long distance carriers and too little to end user rates. Bell Atlantic states that, on this conclusion, the Commission ordered refunds in the amount that it determined long distance carriers had overpaid. Bell Atlantic argues, however, that the Commission declined to provide any guidance on how these amounts should be allocated between classes of customers and that the Commission also refused to provide any opportunity to recover these legitimate amounts from the very customers that it concluded should have paid them. Bell Atlantic asserts that the Commission is not only in violation of its own rules and basic principles of administrative law, but it is also penalizing the LECs for failing to comply with a requirement it had not yet adopted.[5]

On January 16, 1998, SWBT filed Transmittal No. 2683 in order to recover the additional end user common line (EUCL) revenues that it would have received had the EUCL rate been based on the Commission's determined BFP per line. SWBT fully expects that the Commission will allow that Transmittal to take effect as filed. In the event that the Commission does not, however, the Commission should grant the PFR filed by Bell Atlantic and either reverse the

4 Bell Atlantic PFR at p.1.
5 Bell Atlantic PFR at p.2.

portion of the 1997 Annual Filing Order that requires refunds on this issue, or specify a method to allow the affected LECs to recover the additional EUCL revenues.

COMMENTS

SWBT has construed the 1997 Annual Filing Order to require the filing of its Transmittal No. 2683 to avoid an absurd and unreasonable result.[6] The 1997 Annual Filing Order, in describing the amount of EUCL rates that SWBT should have collected, did not specify any particular methodology for SWBT to promptly recover the revenues in question from the ratepayers that the 1997 Annual Filing Order states should have paid them[7] If the 1997 Annual Filing Order is not construed to allow for the revenues in question to be treated as an exogenous cost, SWBT would be effectively and unreasonably prohibited from collecting the proper amount of EUCL rates.

This prohibition would be especially improper since SWBT, as did Bell Atlantic, went on record early in the investigation that it had no objection to the use of a different method to calculate its common line charges with higher EUCL rates and lower carrier common line (CCL) rates if the Commission so desired.[8] The Commission, having failed to provide direction on this request until the end of the five month investigation, cannot now penalize the LECs for

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[6]The Commission has often used a rule of construction that a statute should not be interpreted so as to render an absurd or unreasonable result. For the same reasons, that same rule of construction should be applied to the 1997 Annual Filing Order in this matter. See e.g., Guam Public Utilities Commission Petition for Declaratory Ruling concerning Sections 3(37) and 251(h) of the Communications Act; Treatment of the Guam Telephone Authority and Similarly Situated Carriers as Incumbent Local Exchange Carriers under Section 251(h)(2) of the Communications Act, 12 FCC Rcd 6925 (1997), at paras. 29-31.

[7]While the Annual Filing Order did not specify any method for collecting the amounts, neither did it explicitly prohibit SWBT from making its tariff.

[8]Direct Case of the SBC Companies at p.21.

continuing to charge the EUCL rates during the investigation that the Commission now has determined were too low.

The rules provide no authority to "penalize" the LECs in such a manner for the calculations they used. The 1997 Annual Filing Order implies that the LECs had something to gain by underallocating common line costs to end user rates, but this assumption is not based in fact.

If the 1997 Annual Filing Order is interpreted not to allow for SWBT's tariff change to be made, SWBT respectfully requests that the Commission reverse the portion of the 1997 Annual Access Order that requires the refunds, or provide explicit guidance on how the revenues might otherwise best be recovered promptly from that class of ratepayers from whom the Commission has determined should have paid them. The longer the delay in recovering these revenues, the less likely it is that the ratepayers that should have paid the increased EUCL rates in the second half of 1997 will do so, as the body of EUCL ratepayers continues to change over time.

As Bell Atlantic notes, any other interpretation of the 1997 Annual Filing Order which would prohibit the recovery of these valid costs would violate the Commission's own price cap rules (See 47 CFR Section 61.45(c)).[9] This prohibition would also constitute an improper retroactive obligation as the net effect of the prohibition would be to punish SWBT for not

[9]Bell Atlantic PFR at p.4.

having guessed with precision what the Commission would later require.[10]

CONCLUSION

For the foregoing reasons, the SBC Companies respectfully request that the Commission grant the Petition for Reconsideration filed by the Bell Atlantic Telephone Companies if it does not allow Transmittal No. 2683 filed by SWBT to take effect.

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January 21, 1998

[10]While SWBT has not challenged the imposition of a different forecasting method, on the assumption that the tariff filing will take effect as requested, SWBT notes, as does Bell Atlantic, that the Commission's methodology used to determine whether a different forecasting method should be imposed, is flawed. In the comparison of actual and forecast data, conventional methods emphasize the magnitude rather than simply the direction of error. In light of this practice, the use of the sign test is inappropriate for comparing actual BFP per line to forecasted BFP per line and all conclusions based on the sign test should be ignored. Further, application of the conventional "two-tailed t test" is appropriate in circumstances similar to the current situation. While SWBT has serious reservations concerning the use of statistical tests on a sample with so few observations, the application of the "t" test to the SWBT data shows that there is less than a 5% chance that the mean of SWBT's actual BFP per line is different than the mean of SWBT's forecast BFP per line. Therefore, the contention that SWBT's forecast of BFP per line is biased downward cannot be supported by the evidence.

CERTIFICATE OF SERVICE

I, Mary Ann Morris, hereby certify that the foregoing, "PETITION FOR RECONSIDERATION OF THE SBC COMPANIES" in CC Docket No. 97-149 has been filed this 21st day of January, 1998 to the Parties of Record.

Mary Ann Morris

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January 21, 1998

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